

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Abigail Shuster	Team: Squad #15	CCRB Case #: 201604221	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 05/06/2016 10:30 PM	Location of Incident: Vernon Boulevard and 33rd Road; Inside of the 114th Precinct stationhouse	Precinct: 114	18 Mo. SOL 11/6/2017	EO SOL 11/6/2017	
Date/Time CV Reported Sun, 05/08/2016 10:52 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 05/16/2016 11:23 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Christopher Alikhan	30060	949988	114 PCT
2. Officers			114 PCT
3. POM Nicholas Gigante	09739	949025	114 PCT
4. POM Patrick Obrien	27549	948396	114 PCT
5. POM Vincent Tulipano	04140	949746	114 PCT
6. DT2 William Fisher	06839	893046	114 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Kimberly Washington	01693	928232	114 PCT
2. SGT Sara Morris	00872	942240	114 PCT
3. SGT Ming Zhang	3750	942839	114 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Patrick Obrien	Force: At 33rd Road and Vernon Boulevard in Queens, Police Officer Patrick O'Brien used physical force against § 87(2)(b)	
B.POM Christopher Alikhan	Force: At Vernon Boulevard and 33rd Road in Queens, Police Officer Christopher Alikhan used physical force against § 87(2)(b)	
C.POM Nicholas Gigante	Force: At 33rd Road and Vernon Boulevard in Queens, Police Officer Nicholas Gigante used physical force against § 87(2)(b)	
D.POM Vincent Tulipano	Force: At 33rd Road and Vernon Boulevard in Queens, Police Officer Vincent Tulipano used physical force against § 87(2)(b)	
E. Officers	Force: At 33rd Road and Vernon Boulevard in Queens, officers used physical force against § 87(2)(b)	
F.POM Nicholas Gigante	Force: Inside of the 114th Precinct stationhouse, Police Officer Nicholas Gigante used physical force against § 87(2)(b)	
G.POM Nicholas Gigante	Force: Inside of the 114th Precinct stationhouse, Police Officer Nicholas Gigante used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
H.DT2 William Fisher	Abuse: Inside of the 114th Precinct stationhouse, Detective William Fisher threatened to arrest § 87(2)(b)	
I.POM Christopher Alikhan	Abuse: Inside of the 114th Precinct stationhouse, Police Officer Christopher Alikhan summonsed § 87(2)(b) for disorderly conduct.	

Case Summary

On May 8, 2016, § 87(2)(b) called IAB to file this complaint. It was received at the CCRB on May 16, 2016, under original log number 16-16212.

On May 6, 2016, at approximately 10:30pm, § 87(2)(b) was driving his vehicle on 33rd Road and Vernon Boulevard in Queens when he was pulled over by the PO Christopher Alikhan, PO Nicholas Gigante, and PO Patrick O'Brien of the 114th Precinct. Seated in the front passenger seat was his sister, § 87(2)(b). § 87(2)(b) alleged the following: PO Patrick O'Brien, PO Christopher Alikhan, and PO Nicholas Gigante, and PO Vincent Tulipano of the 114th Precinct used force against § 87(2)(b) in removing him from his vehicle and apprehending him (**Allegations A –D**). Once he was on the ground, § 87(2)(b) reported that unidentified officers kicked him in the shoulder, kned him in the ribs, and punched him in the upper right side of his face (**Allegation E**). He reported no injuries as a result of this force.

§ 87(2)(b) and § 87(2)(b) were both transported to the 114th Precinct stationhouse. While standing in front of the desk and inquiring about his property, PO Gigante allegedly grabbed § 87(2)(b) by the back of the neck and led him away from the desk and toward the holding cells, maintaining such contact (**Allegation F**). § 87(2)(b) reported experiencing soreness to his neck the following day as a result.

After reaching the cells area, PO Gigante allegedly pushed § 87(2)(b) against a wall, face-first, resulting in bruising and swelling to § 87(2)(b)'s left eye (**Allegation G**). § 87(2)(b) fell to the ground as a result. PO Gigante then allegedly pulled § 87(2)(b) to a standing position by the hairs on the top of his head (**within Allegation G**).

§ 87(2)(b) who was released on a Desk Appearance Ticket, was waiting in the stationhouse for a ride when § 87(2)(b) was escorted to the ambulance. Upon rising from her seat to follow her brother, Det. William Fisher of the 114th Precinct allegedly told her, "If you go out that door, you'll go back to the holding cell where you just came from" (**Allegation H**).

§ 87(2)(b) obtained medical treatment from § 87(2)(b) while in police custody. He was charged with § 87(2)(b).

PO Alikhan summonsed § 87(2)(b) for disorderly conduct (**Allegation I**).

Mediation, Civil and Criminal Histories

- Due to § 87(2)(b)'s arrest, this case was not eligible for mediation.
- On September 20, 2016, a FOIL request was filed with the Office of the New York City Comptroller to verify whether any notices of claim were filed in regard to this incident. The results will be added to the case file upon receipt.

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
■ [REDACTED]
[REDACTED]
[REDACTED]

Civilian and Officer CCRB Histories

- [§ 87(2)(b)] filed one previous CCRB complaint [§ 87(2)(b)]
[REDACTED]
- This is [§ 87(2)(b)]'s first CCRB complaint (BR 2).
- This is PO Alikhan's first CCRB complaint during his five-year tenure with the NYPD.
- During PO Gigante's six-year tenure with the NYPD, he has been the subject of two previous CCRB allegations involving two CCRB cases. Both were physical force allegations, one of which was exonerated and one was unsubstantiated.
- This is PO O'Brien's first CCRB complaint during his 7-year tenure with the NYPD.
- During PO Tulipano's six-year tenure with the NYPD, he has been the subject of three previous allegations involving three cases. All three were force allegations and none of the cases developed into full investigations.

Potential Issues

- [§ 87(2)(b)] made force allegations that occurred within the 114th Precinct stationhouse. Contact attempts were made to two potential witnesses, [§ 87(2)(b)] and [§ 87(2)(b)], who were both inside of the holding cell area at the time of occurrence, as per the Prisoner Holding Pen Roster. Contact was not successfully made with either of them, and as such, no witnesses were located for Allegation G.
- Det. William Fisher, [§ 87(2)(g)], retired as of July 1, 2016. [§ 87(2)(g)].

Findings and Recommendations

Explanation of Subject Officer Identification

- Abuse of Authority – Threat of Arrest: [§ 87(2)(b)] testified that the officer who threatened her with arrest inside of the 114th Precinct stationhouse was one of the officers seated behind the desk. She described this officer as a white male in his 50s, with a medium build, salt and pepper-colored hair, who was dressed in uniform. On the incident date, Det. William Fisher was assigned to the role of Telephone Switchboard Operator at the 114th Precinct, and according to CTS, Det. Fisher is a 51-year-old white male. The desk sergeant at the time of the incident was Sgt. Ming Zhang, who is a 43-year-old Asian male. The in-house Department Advocate's Office confirmed that Det. Fisher retired from the NYPD on July 1, 2016, and as such could not be interviewed for this case. [§ 87(2)(g)]
[REDACTED]
[REDACTED].

Allegations Not Pled

- Abuse of Authority – Vehicle stop: § 87(2)(b) acknowledged that his headlight was out. § 87(2)(g)
- Abuse of Authority – Property Damage: § 87(2)(b) reported that when his vehicle was returned to him after release from police custody, the two rear door handles were partially detached. Although he was certain that the handles were not broken prior to the police encounter, he did not actually observe any officer or officers break the handles nor did he say any officer attempting to open these rear doors. § 87(2)(g)

Allegation A – Force – At 33rd Road and Vernon Boulevard in Queens, Police Officer Patrick O'Brien used physical force against § 87(2)(b)

Allegation B – Force - At 33rd Road and Vernon Boulevard in Queens, Police Officer Christopher Alikhan used physical force against § 87(2)(b)

Allegation C - At 33rd Road and Vernon Boulevard in Queens, Police Officer Nicholas Gigante used physical force against § 87(2)(b)

Allegation D - At 33rd Road and Vernon Boulevard in Queens, Police Officer Vincent Tulipano used physical force against § 87(2)(b)

It is undisputed that these officers used physical force against § 87(2)(b) § 87(2)(g).

§ 87(2)(b) testified that he became aware that the officers were attempting to pull him over when he saw police lights in his rear view mirror. He reported that both he and his sister, § 87(2)(b) (who was seated in the front passenger seat at the time) have difficulty hearing. § 87(2)(b) testified that an officer approached the driver's side door and immediately pulled the door open and began tugging at § 87(2)(b)'s clothing to get him out of the vehicle. § 87(2)(b) denied being instructed by any officer to exit the vehicle (BR 3).

§ 87(2)(b) told IAB when he filed this complaint that the officers had pulled him out of the vehicle by his neck, but he did not repeat this allegation during either his telephone statement nor in his in-person sworn statement to the CCRB. At the time of his sworn statement, § 87(2)(b) testified that the officers pulled at his arms and the hood of his sweatshirt in order to remove him from his vehicle. He then landed on the ground, face-down, where he was forcibly handcuffed (BR 3).

§ 87(2)(b) reported having difficulty hearing and stated that she was not aware of the officers' presence until her brother pulled over. She testified that an officer did instruct § 87(2)(b) to exit from the vehicle twice. From her vantage point on the passenger side, she had difficulty seeing exactly how the officers physically removed him from the vehicle, but she knew that he was removed somehow. Once he was removed, she exited from the vehicle and ran around to the driver's side to see five uniformed officers on top of § 87(2)(b). She screamed and told her brother not to move, at which time PO Kimberly Washington (who had arrived as backup) blocked her path and ensured she kept a distance. She was unable to describe the duration of § 87(2)(b)'s apprehension (BR 4).

§ 87(2)(g)

Officers are to use the minimum force reasonably necessary to effect an arrest. NYPD Patrol Guide 221-02 (BR 14).

§ 87(2)(g)

Allegation E – At 33rd Road and Vernon Boulevard in Queens, officers used physical force against § 87(2)(b)

§ 87(2)(b) reported being kicked in the shoulder, kneed in the ribs, and punched in the upper right side of his face with a closed fist while on the ground outside of his vehicle. He did not know which officer(s) performed any of these actions because his hood was covering part of his face, it was relatively dark, and there were multiple officers on top of him as he faced down. § 87(2)(b) testified that his sister would likely have had a better view of the force used against him (BR 3).

§ 87(2)(b) however, testified that when she came around to the driver's side of the vehicle, five officers were on top of § 87(2)(b). She was unable to further describe the actions the officers took against him. She did not report witnessing any punches, kicks, or knee strikes (BR 4).

All six officers on scene were interviewed for this case. They each denied performing any of these actions and denied observing any other officer do so. As discussed, the consensus among the officers was that § 87(2)(b) resisted arrest by moving his body to avoid apprehension and that the officer out-muscled him by restraining his arms within a one-minute period (BR 5-9, BR 11).

§ 87(2)(g)

Allegation F – Force – Inside of the 114th Precinct stationhouse, Police Officer Nicholas Gigante used physical force against § 87(2)(b)

§ 87(2)(b) reported that PO Gigante led him from the stationhouse desk to the back cells by holding onto the back of his neck. He denied that any other officers were present while he was being escorted, and reported experiencing soreness to his neck the following day. He did not report any restricted breathing as a result of this contact (BR 3).

PO Gigante testified that both he and PO Alikhan, § 87(2)(b)'s arresting officer, led § 87(2)(b) from the desk to the cells together. PO Gigante held on to § 87(2)(b)'s wrist and arm area and denied making any contact whatsoever with § 87(2)(b)'s neck. He could not recall whether PO Alikhan was also making physical contact with § 87(2)(b) during the walk, but denied seeing PO Alikhan make any contact with § 87(2)(b)'s neck area. PO Gigante also noted that § 87(2)(b) tensed his back during the walk and made aggressive movements (BR 7).

PO Alikhan testified that he walked § 87(2)(b) from the desk area to the cells, with PO Gigante walking directly behind them. PO Alikhan held § 87(2)(b) – who was agitated but walked willingly – by the arm. He denied making any contact with § 87(2)(b)'s neck during the walk and denied seeing PO Gigante do so (BR 6).

Sgt. Zhang, who was working as the desk sergeant at the time, was interviewed. He did not recall seeing or interacting with § 87(2)(b) and did not recall seeing any officer guide him from the desk to the cells by the back of his neck (BR 10). PO Washington was also inside of the 114th Precinct stationhouse and testified to observing § 87(2)(b) being led from the desk to the cells by PO Alikhan, whom she stated was holding § 87(2)(b)'s left arm. She denied seeing any officer make contact with § 87(2)(b)'s neck (BR 9).

§ 87(2)(g)

Allegation G – Force - Inside of the 114th Precinct stationhouse, Police Officer Nicholas Gigante used physical force against § 87(2)(b)

It is undisputed that a struggle occurred between § 87(2)(b) and the officers in the vicinity of the holding cells, and that force was used against § 87(2)(b) in some form. § 87(2)(g)

§ 87(2)(b) alleged that, upon reaching the cells and in view of the prisoners in the holding cell, PO Gigante slammed § 87(2)(b) face-first, into a wall. Immediately prior, PO Gigante had allegedly escorted § 87(2)(b) to the area by the neck (see Allegation F), then immediately slammed him into the wall. He testified to being handcuffed at the time and noted that his left eye made contact with the wall first, causing him to fall to the ground and lose consciousness. PO Gigante then allegedly picked § 87(2)(b) up by the hair on his head. As a result of these actions, § 87(2)(b) reported bruising to his left eye area, for which he obtained medical attention while in police custody (BR 3).

§ 87(2)(b) was admitted to § 87(2)(b) on § 87(2)(b), at § 87(2)(b), while he was in police custody. He informed medical personnel that he was “assaulted by the police; states that he was pulled out of his car and beat up.” He complained of head pain, left shoulder and right knee pain, and presented slight swelling to his left eye. A CT scan was performed with negative results, and the x-rays taken of § 87(2)(b)'s two wrists, right knee, and right shoulder showed no

signs of fracture or dislocation. He was diagnosed with a contusion and given Ibuprofen (see medical records).

PO Gigante and PO Alikhan, who were the only two officers present, § 87(2)(g) [REDACTED]. PO Alikhan testified that it was he who removed § 87(2)(b) [REDACTED]'s handcuffs while standing behind him, at which time § 87(2)(b) [REDACTED] was standing one foot away from a wall. § 87(2)(b) [REDACTED] immediately began swinging his arms, flailing them, and rotating his body. In the process of the officers attempting to place him back in handcuffs, § 87(2)(b) [REDACTED] hit his own head on the wall, as he was being “insane” and a “lunatic.” PO Alikhan testified to re-cuffing § 87(2)(b) [REDACTED] in a standing position and denied that § 87(2)(b) [REDACTED] ever went to the ground. He also denied § 87(2)(b) [REDACTED] having struck or attempted to strike either of the officers and testified that the only physical contact that he and PO Alikhan had was with § 87(2)(b) [REDACTED]'s arms. He denied pushing § 87(2)(b) [REDACTED] against the wall or observing PO Gigante do so. The Medical Treatment of Prisoner Report, which PO Alikhan prepared, notes that § 87(2)(b) [REDACTED] was “flailing arms and kicking legs, resulting in [him] falling to the floor/wall and receiving a bump to his left eye, from violently fight with cops on ground”(BR 16). Upon reviewing the report during his CCRB interview, PO Alikhan stated that he did not independently recall § 87(2)(b) [REDACTED] going to the ground but that the Report reflects a more timely recollection of the event (BR 6).

PO Gigante testified that it was he who removed the handcuffs from § 87(2)(b) [REDACTED] and that upon doing so, § 87(2)(b) [REDACTED] turned around and swung at PO Gigante’s head area. He was unable to see whether it was with a closed or open hand, and stated that § 87(2)(b) [REDACTED] did not actually strike him. He stated that either he or PO Alikhan – he could not remember which one – pushed § 87(2)(b) [REDACTED] against the wall in order to place him back in handcuffs. § 87(2)(b) [REDACTED]'s chest made contact with the wall and PO Gigante denied seeing § 87(2)(b) [REDACTED]'s head strike the wall. § 87(2)(b) [REDACTED] immediately flopped to the ground in slow-motion, dropping first to his knees, then slowly down, where he was handcuffed by the officers. He denied seeing § 87(2)(b) [REDACTED]'s head strike the ground and denied seeing any injuries on § 87(2)(b) [REDACTED] (BR 7).

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation H – Abuse of Authority – At the 114th Precinct stationhouse, Detective William Fisher threatened to arrest § 87(2)(b)

§ 87(2)(b) testified that she attempted to follow § 87(2)(b) out of the 114th Precinct stationhouse as he was being escorted to the ambulance by officers. As she did so, she alleged that an officer told her, “If you go out that door, you’ll go back to the holding cell where you just came from”(BR 4).

As discussed, the investigation determined that Det. Fisher to be the subject officer of § 87(2)(b) s allegation, as he was working as the Telephone Switchboard Operator at the time and he fit § 87(2)(b) s description.

According to the Department Advocate’s Office, Det. Fisher retired from the NYPD, effective July 1, 2016 (BR 18). As such, he could not be interviewed for this case.

All of the officers interviewed for this case denied hearing any officer make the above statement to § 87(2)(b) or threaten her with arrest in any manner.

§ 87(2)(g)

Allegation I – Abuse of Authority – Inside of the 114th Precinct stationhouse, Police Officer Christopher Alikhan summonsed § 87(2)(b) for disorderly conduct.

§ 87(2)(g)

It is undisputed that PO Alikhan issued § 87(2)(b) a summons for disorderly conduct and released her from the stationhouse. § 87(2)(b)'s behavior on scene, as testified to by the officers and by § 87(2)(b) herself, is also undisputed. § 87(2)(g)

The following information is undisputed: § 87(2)(b) exited from the vehicle when § 87(2)(b) and the officers began struggling outside of the driver's side door. She was screaming continuously and attempted to approach the area where § 87(2)(b) and the officers were, at which time PO Washington placed her body in between § 87(2)(b) and the officers and told her to get back. Of those interviewed, § 87(2)(b) PO Washington, PO Alikhan, PO Gigante, and PO O'Brien, all testified that § 87(2)(b) did not attempt to get close to her brother any subsequent times. Only Sgt. Morris, who arrived partway into the struggle, testified that § 87(2)(b) was "not fully compliant" with the officers' instructions and that she did appear to be attempting to reach her brother and was being "disorderly." The other four officers stated that § 87(2)(b) remained between 6 and 15 feet away from § 87(2)(b) at all times.

§ 87(2)(g)

§ 87(2)(b): PO Gigante testified that § 87(2)(b) told § 87(2)(b) to "stop resisting" and to "listen to the officers," while the pair were still seated inside of the vehicle. During the struggle itself, according to PO Gigante, § 87(2)(b) was screaming, "Mommy will be mad at you!" (BR 7).

The surrounding circumstances are also undisputed among all parties. The incident occurred beginning at 10:20pm, at which time there were no pedestrians in the area, no gathering of a crowd, and no vehicular traffic stopping to watch the incident transpire. The incident location is close to a Costco store and is otherwise an industrial area. § 87(2)(b)'s summons notes: "At TPO, observed acting in a violent threatening manner in plain/public view on a public street." (BR 17).

§ 87(2)(g) Sgt. Morris arrived on scene partway through the incident and verified § 87(2)(b) and § 87(2)(b)'s arrests. She testified that both of these arrests were for § 87(2)(b), as contraband had been seen and recovered from the vehicle by the time she arrived. Sgt. Morris testified that she had no knowledge of § 87(2)(b) being summonsed for disorderly conduct and denied verifying that charge for her at any point in time (BR 11).

PO Alikhan stated that he spoke with Sgt. Morris once she arrived on scene about the charges for § 87(2)(b) but could not recall whose decision it was to summons her for disorderly conduct (BR 6). PO Washington stated that she spoke with Sgt. Morris about § 87(2)(b)'s actions on scene prior to Sgt. Morris's arrival but she could not recall whether charges were discussed

during that conversation (BR 9).The remaining officers did not know how the determination to summons § 87(2)(b) for disorderly conduct was made.

§ 87(2)(g)

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating the risk thereof, engages in fighting or in violent, tumultuous or threatening behavior. New York State Penal Law 240.20 (1) (BR 15).

§ 87(2)(g)

§ 87(2)(g)

Squad: 15

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date